



***State of New Jersey***  
**Board of Public Utilities**  
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July 18, 2002

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
455 12<sup>th</sup> Street, SW Portals II Building  
Washington, DC 20544

Re: In the Matter of the Inquiry Concerning High Speed Access to the Internet  
Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate  
Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities

CS Docket No. 02-52

Dear Ms. Dortch:

The New Jersey Board of Public Utilities ("the Board or NJBPU") hereby files reply comments to the questions posed in the Federal Communications Commission's (FCC) Notice of Proposed Rulemaking (NPRM) which addressed the consequences of the classification of cable modem service as an "Information Service", as defined in section 3 (20) of the Communications Act of 1934 as amended, 47 U.S.C. 153 (20).

BOARD OF PUBLIC UTILITIES  
BY:

*Jeanne M. Fox*

JEANNE M. FOX,  
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CAROL J. MURPHY  
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*Connie O. Hughes*

CONNIE O. HUGHES  
COMMISSIONER

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning High Speed	)	
Access to the Internet Over Cable	)	
and Other Facilities	)	
	)	
	)	CS Docket No. 02-52
Internet Over Cable Declaratory	)	
Ruling	)	
	)	
Appropriate Regulatory Treatment	)	
for Broadband Access to the	)	
Internet Over Cable Facilities	)	

REPLY COMMENTS  
STATE BOARD OF PUBLIC UTILITIES

INTRODUCTION

The New Jersey Board of Public Utilities (NJBPU) respectfully submits the following reply comments to those received by the Federal Communications Commission ("FCC") in the Notice of Proposed Rulemaking ("NPRM"), released March 15, 2002, on the Matter of Inquiry Concerning High Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities. The NJBPU realizes there are numerous complex issues raised in the NPRM and that the creation of a national policy is a difficult task. Obviously, regulation is not a final examination with answers in the back of the book but reasonable regulation that have as a goal to serve the public interest without frustrating technological development that should be the ultimate aim of all regulators. The NJBPU would like to focus our reply comments on the area of preemption of state authority over consumer-related regulation.

1. COMMENT: Comcast Corp, the largest cable operator in New Jersey, serving approximately 1.3 million subscribers, commented that customer service is safeguarded "by the imperatives of a competitive market". NJBPU cannot agree that a truly competitive market exists now or will safeguard users when the market expands. The Board's Office of Cable Television has received more complaints about Comcast's Internet service in a five-week period than it receives in an average year regarding Comcast's cable service.

Comcast states, "significant loss would result from the adoption of a patchwork quilt of state and local rules regarding customer service, privacy, and any other element of cable Internet service."

In New Jersey, our experience has shown that reasonable regulation by the state properly placed does not impede market growth. This is clearly supported by the availability and use of cable industry services in our state. Notwithstanding our regulation under Title VI and the 1972 New Jersey State Cable Act, N.J.S.A. 48:5A-1 et seq., the industry has shown strong growth with 99% availability of cable television while penetration levels are at 70%. Similarly, our enforcement of customer service requirements, adopted in 1991, mirror the 1993 standards set by the FCC for all cable providers.

The FCC has a long history of deferring customer service issues to the state or local franchising authority. One such example is the treatment of late fees. The FCC declined to adopt regulations governing late fees, clearly deferring such action to local authorities. The FCC correctly recognized that late fees are within the purview of the franchising authority and are more appropriately dealt with through local negotiation or the application of state or local consumer service regulations. The state has 2.4 million subscribers. Continuation of New Jersey 's customer service regulations applied to the Internet service would not deter the growth of Internet-ready technologies any more than it did the growth of cable television. Cable modem service is available to nearly 60% of our residents. New Jersey was one of very few "trial states" where unregulated, Comcast's cable Internet evolved. The cable operators in our state, mainly multiple system owners, were supremely poised to offer Internet access via a cable modem due to cable upgrade policies which created state-of-the art networks in the early 1990s. Comcast, and others to follow, were left uniquely positioned to convert their networks to Internet ready platforms.

Preemption of state authority by the FCC in provisions for reasonable regulation would be equivalent to an absentee landlord monitoring its out-of-state real estate property day to day rather than choosing to allow the on-site management that authority. This presumes that if the state's authority is preempted, the FCC in its place will be directly involved in disputes between the provider and the subscribers when competition between "information providers" begins.

A truly competitive market does sensitize providers to customer needs, competition to cable modems, mainly DSL, do not create in itself incentive to provide adequate consumer service. Unlike a cable subscriber who switches to satellite and suffers virtually no "down time" in the process, a cable modem customer must go to great expense and inconvenience with a disconnection and a new installation of a competing technology. Therefore, the cable customer's option to switch at will may work in video transport but is far less seamless for cable Internet.

2. COMMENT: AOL-Time Warner urged the FCC on Page 8 Subsection B of its comments under State and Local Regulation, to expressly declare, as a general policy matter, that simply because state and local officials historically have exercised regulatory jurisdiction with regard to certain aspects of the cable television business, this does not lead to the conclusion that it would be appropriate or desirable for state and local government to exercise a similar level of regulatory authority over cable modem service. AOL-Time Warner continues on Page 11 Subsection C that “the regulation of cable television by state and/or local officials today is largely a legacy of cable’s origin as a locally-oriented service.”

The NJBPU agrees with AOL-Time Warner’s premise that cable television’s origins were fundamentally that of local service designed to improve reception of over-the-air broadcast signals. Our agency derives authority to regulate cable companies from our state statute, N.J.S.A. 48:5A-1 et seq. Our certification by the FCC as “the local rate regulator” recognizes the ability of our agency to implement the federal regulations fairly and accurately. The same can be said for enforcement of the federal technical standards and the franchising process. The NJBPU’s Office of Cable Television has a 30-year history since 1972 of assisting our 2.5 million cable television subscribers with cable related complaints.

What does the NJBPU tell consumers who call our 800 number for assistance when their cable company’s Internet experiences an outage or other electronic impairments? On such occasions we have received the cooperation of cable companies in providing relief and remediation to subscribers perhaps because the classification of cable modem was at that time in limbo. With a clear distinction that customer service regulations are preempted by federal policy or regulation, the operators may not be as quick to cooperate with state or local regulators. If the FCC were to limit the state’s authority to regulate cable modem service to one aspect, it might be that the most reasonable choice would be customer rights.

AOL-Time Warner cites the legislative history of the 1984 Federal Cable Act as having a primary goal of encouraging the “growth and development of cable systems, free of unnecessary and burdensome restrictions imposed by state and local authorities.” Application of our cable consumer rights regulations has not hampered development in New Jersey, arguably the most cable-wired state in the nation since the late 1980’s. The fact that the title of the law reestablishing regulation eight years later within the cable industry was chosen to be the Cable Television Consumer Protection and Competition Act of 1992 is a clear indication of the intent of Congress that customer protection should be of equal import as extension of competition within the industries.

3. COMMENT: Cablevision Systems Corp. argues against a “patchwork of unmanageable rules that inevitably will raise costs and slow deployment.” An example of an operational problem Cablevision fears it would face is:

“Customer service representatives would have to be trained town by town, city by city, to record customer service questions, complaints or inquiries to comply with local reporting rules, and would have to be trained to assist in provisioning services in a manner dictated by local rule rather than customer demands.”

One would think it would be in the best interest of a cable operator from an operational cost perspective to cross train customer service representatives to handle both cable television and cable modem complaints or inquiries. Certainly, by establishing national consumer protection regulations for cable Internet providers, the FCC could protect both the consumer and the cable operator from the imposition of unreasonable town by town, city by city regulation. That at a minimum would not expose consumers to a totally deregulated market.

The NJBPU serves as the official complaint officer in over 90% of our 562 cabled municipalities. Both the adjudication process and enforcement responsibilities lie within the NJBPU compelling adherence to the federal customer rights regulations adopted by the FCC in the last decade. In fact, our consumer rights regulations were adopted three years prior to the FCC standards and there is very little if any difference in these two sets of regulations. If it were appropriate for the FCC to standardize consumer regulations for cable television reception, would it not be appropriate for the same to occur now for cable modem service? Otherwise, it would likely be unmanageable for the FCC to be the national gatekeeper adjudicating street repair, excavation and restoration disputes during and after the modification and/or maintenance of a cable Internet network in thousands of municipalities across the country.

Furthermore with the increased use of telecommuting, the need for an intermediary, federal or state, should also include competitors such as Direct Broadcast Satellite, (DBS), Multi-Channel Multipoint Distribution Service, (MMDS), Local Multipoint Distribution System, (LMDS).

In conclusion, the NJBPU believes that premature regulatory forbearance, not unlike the deregulation of cable programming service tier rates, will inappropriately expose consumers. High Speed Internet access is coming out of the stage of infancy development. Some consumer protection over the adolescent industry is proper. At such time as it is truly and robustly a competitive market, then market competition should protect consumers. However, until that time has come, the fundamental right of an Internet subscriber should be to expect government recourse. If and when needed as an intermediary, state authorities should be

permitted to resolve disputes between the provider and the subscriber and possibly prevent disputes by obligating providers to a reasonable standard of regulation, which can be codified in franchises and enforced by state regulation.